Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

* * *

NO. 79-112

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JAMES H. COUNTRYMAN
Petitioner,

V.

THE STATE OF TEXAS AND THE
STATE FARM INSURANCE COMPANY
Respondents.

* * *

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * *

BRIEF IN OPPOSITION

* * *

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BRIEF IN OPPOSITION

OPINION BELOW

There is no opinion below as the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the United States District Court for the Western District of Texas without a written opinion pursuant to Rule 21 of the Local Rules of the United States Court of Appeals for the Fifth Circuit. The disposition of the case is reported in *Countryman v. State of Texas*, 588 F.2d 1355 (5th Cir. 1979) [Table].

JURISDICTION

The formal jurisdictional requisites of the petition and its timely filing would appear to be satisfied

although respondent disputes Petitioner's contention that any rights guaranteed by the Constitution of the United States have been denied.

QUESTIONS PRESENTED

1. Whether the ten thousand dollar jurisdictional amount provided for in 28 U.S.C. §§1331 and 1332 is constitutional?

2. Whether the Petitioner, Mr. Countryman, as plaintiff below, presented allegations that were sufficient to invoke the jurisdiction of the Federal District Court?

STATUTORY PROVISIONS INVOLVED

Although Petitioner contends that many constitutional and statutory provisions are involved, Respondent submits that 15 U.S.C. §1012(a) and 28 U.S.C. §§1331(a) and 1332(a) are the only material statutory provisions involved. A copy of these statutory provisions is found in the appendix herein.

STATEMENT OF THE CASE

The Petition for Writ of Certiorari results from the affirmance by the United States Court of Appeals for the Fifth Circuit of the judgment of the United States District Court for the Western District of Texas, Midland-Odessa Division, dismissing petitioner Countryman's lawsuit for lack of subject matter jurisdiction.

This action was filed by Petitioner Countryman on July 19, 1976. In response to his complaint, the State of Texas filed its motion to dismiss, and State Farm County Mutual Insurance Company of Texas filed its answer, which contained a request that the complaint be dismissed. Petitioner Countryman countered by filing a motion to strike in response to the State's motion to

dismiss and a demurrer in response to the answer filed by State Farm County Mutual Insurance Company of Texas.

The United States District Court entered an order, on July 15, 1978, dismissing the cause of action for want of subject matter jurisdiction.

Respondent State of Texas therefore presents to the Court a statement of the case concentrating upon the procedural nature of the case--dismissal on jurisdictional grounds, rather than upon substantive legal questions arising from a trial on the merits. However, an underlying basis for Petitioner Countryman's lawsuit is to be found in his statement of the case (Petition for Writ of Certiorari, pages 4 through 9).

Petitioner Countryman apparently was stopped for speeding and was duly cited for the offense. He paid the fine for speeding that had been assessed against him. Subsequently, the insurance company that insured Petitioner Countryman increased his premium for insurance coverage as a result of his speeding conviction. Petitioner Countryman's response was to proceed to federal district court to seek redress for such action, even though his claim was primarily contractual and involved no substantial federal question.

ARGUMENT AND AUTHORITIES

I.

PETITIONER'S CONTENTION THAT CONGRESS HAS NO AUTHORITY TO RESTRICT THE JURISDICTION OF THE INFERIOR FEDERAL COURTS IS WITHOUT MERIT.

The primary focus of the Petition for Writ of

Certiorari is that Congress has no authority to limit the jurisdiction of the inferior federal courts and that the imposition of a ten thousand dollar jurisdictional amount is therefore unconstitutional. This proposition is set out at page 12 of the Petition for Writ of Certiorari. In challenging the constitutionality of 28 U.S.C. §§1331 and 1332, it is apparent that Petitioner Countryman fails to understand the power of Congress to limit and define the jurisdiction of the inferior federal courts. Only the jurisdiction of the Supreme Court of the United States is derived directly from the Constitution. The Constitution simply gives to inferior courts the capacity to take jurisdiction where such jurisdiction is conferred by Congress. Consequently, the inferior courts are subject to the statutes which prescribe their jurisdiction and such statutes cannot be in conflict with the Constitution unless they confer upon such courts powers not enumerated therein. *Shelton v. Sill*, 49 U.S. (8 How.) 441, 449 (1849).

Where such jurisdiction is given, it can also be taken away. *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-34 (1922). This principle was aptly stated in *Harlan v. Pennsylvania Railroad Co.*, 180 F. Supp. 725, 726 (W.D. Pa. 1960), wherein the court stated:

> The Constitution of the United States vests in Congress the power to create inferior courts which includes the United States District Court, Article III, Section I, Constitution of the United States. It would follow, therefore, as a necessary corollary that since Congress has been empowered to create United States District Courts, Congress can eliminate them. The power to create is the power to destroy. The conclusion must inevitably follow that since Congress can eliminate the United States District Courts, it can limit and define their jurisdiction.

See also, *Lockerty v. Phillips*, 319 U.S. 182,187 (1943).

In *Goldsmith v. Sutherland*, 426 F.2d 1395, 1398 (6th Cir. 1970), cert. denied 400 U.S. 960 (1970), the court specifically rejected an attack on the constitutionality of 28 U.S.C. §1331 as being "without merit since the federal district courts are courts of limited jurisdiction and have only such jurisdiction as Congress may confer upon them by statute."

The effect of these cases is to prevent Petitioner from invoking the jurisdiction of a federal district court merely by asserting that the statutes by which Congress conferred jurisdiction upon the district courts are unconstitutional.

II.

THE COURT OF APPEALS PROPERLY AFFIRMED THE JUDGMENT OF THE DISTRICT COURT DISMISSING PETITIONER'S SUIT ON THE GROUND THAT THE COURT WAS WITHOUT JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIMS ASSERTED IN PLAINTIFF'S COMPLAINT.

Federal courts are courts of limited jurisdiction, created to adjudicate only those legal causes clearly falling within their jurisdiction. Federal courts may entertain actions where litigants are of diverse state citizenship, provided that the requisite jurisdictional amount is present. In the instant cause, the State of Texas submits that there is a total lack of diversity of citizenship among the litigants, there is an absence of any federal question, there is a clearly inadequate amount in controversy, and there has been faulty service of process.

A. No Diversity Jurisdiction

Jurisdiction over citizens may be gained by the federal courts when the parties to the action are of diverse state citizenship and the amount in controversy exceeds ten thousand dollars. The citizenship of the parties must reflect a "pure" diversity, which requires that none of the plaintiffs or defendants in the suit may share common state citizenship. *Anderson v. Papillion*, 445 F.2d 841 (5th Cir., 1971). In this regard, it must be remembered that the diversity statute, 28 U.S.C. §1332, neither sanctions a suit against a state nor contemplates that a state is a citizen within the statutory term. *See Postal Telegraph Co. v. Alabama*, 155 U.S. 482, 487 (1894).

The pleadings in the district court established that Petitioner Countryman was insured by a Texas chartered insurance company, State Farm Mutual Insurance Company of Texas, rather than by State Farm Insurance Company, an Illinois chartered company, as originally alleged by Petitioner. A review of the correspondence in the appendix to the Petition for Writ of Certiorari, especially pages A14-A15, demonstrates the Texas company was the insurer. Therefore, the dispute involves parties as to whom Petitioner cannot establish a diversity of citizenship.

B. No Federal Question Involved

A second deficiency in the Petitioner's attempt to gain access to the federal courts lies in the absence of a federal question among his asserted claims. Federal courts traditionally deny jurisdiction in cases where there has been a frivolous assertion of the existence of a nexus between the Constitution and the subject matter of a dispute. To give a federal court jurisdiction, the

question must be substantial. *Cuyahoga River Power Co. v. Northern Ohio Traction and Light Co.*, 252 U.S. 388, 399 (1920).

Contrary to Petitioner Countryman's claims, original federal jurisdiction over this action cannot be gained simply by arguing that surcharges levied by a private insurance company constitute ex post facto laws, cruel and unusual punishment, and infringements on double jeopardy protections.

Petitioner Countryman has presented frivolous claims couched in terms of constitutional questions; these claims actually involve nothing more than a question of contract law having no connection with any federal question. It is well-settled that a federal court may dismiss for want of jurisdiction where the alleged claim under the Constitution or federal statutes appears to be immaterial and is made solely for the purpose of obtaining jurisdiction where such claim is insubstantial and frivolous. *Bell v. Hood*, 327 U.S. 678, 682-683 (1946).

Petitioner apparently contends that the State of Texas has deprived him of his constitutional rights through its regulation of the business of insurance. Petitioner fails to distinguish between his conviction for speeding under the criminal law and the higher insurance premium he must pay for his automobile insurance because his driving record indicates that he is in a higher risk category as a result of his speeding conviction.

The business of insurance is one of the most extensively regulated activities in Texas. The federal government, in adopting the McCarran-Ferguson Act, 15 U.S.C. §1011 et seq., left to the various states the regulation of insurance. Specifically, in 15 U.S.C. §1012, Congress provided:

> (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

Under Petitioner's contract with his insurer, he could be charged an increased premium, as a surcharge, if his driving record reflected adverse factors indicating he was a greater risk to insure. Because of his poor driving record, and the increase in his insurance premium, Petitioner now attempts to fabricate a federal question by alleging that the fine he paid for his speeding conviction should bar any attempt to increase his insurance premium, and the State of Texas, by failing to prohibit such increase subjected him to double jeopardy and impaired his right to contract.

If Petitioner Countryman's frivolous allegations of constitutional questions are stripped from his complaint, only the following remains: (1) Petitioner Countryman questions his contractual rights under his insurance policy, and (2) he questions the manner in which the State of Texas regulated the business of insurance. Neither complaint rises to a federal question.

Consequently, in the absence of a substantial federal question, the Petitioner cannot invoke the jurisdiction of a federal court, and he must seek redress in the state court system.

C. Lack of Jurisdictional Amount

To invoke federal jurisdiction over a controversy, it is also necessary for the plaintiff to assert, in good faith, a claim in excess of ten thousand dollars. 28 U.S.C. §§1331, 1332. The State of Texas submits that the amount of actual damages suffered as a result of the insurance surcharges is less than one hundred dollars. Consequently, Petitioner Countryman cannot in good

faith satisfy the jurisdictional requirement, and the federal district court properly dismissed for want of jurisdiction. *North Pacific S.S. Co. v. Soley*, 257 U.S. 216, 221 (1921).

Petitioner's attack upon the constitutionality of 28 U.S.C. §§1331 and 1332 for setting a ten thousand dollar jurisdictional amount demonstrates his inability to present a claim falling within this amount.

D. Proper Service Not Obtained

Even if Petitioner could have presented a valid federal question, the district court had further reason to refuse to exercise its jurisdiction in this action, because Petitioner Countryman has failed to comply with rule 4(d)(6) of the Federal Rules of Civil Procedure, which requires a plaintiff to serve the chief executive of an agency made a party to a suit.

Although Petitioner Countryman named the State of Texas as a party to this action, a review of his complaint reveals that the proper party was the State Board of Insurance of Texas, whose chief executive officer is the Commissioner of Insurance. The Petitioner's failure to designate the proper party has resulted in service upon the Governor of Texas, whose office has no authority over the subject matter in controversy.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Rowland Cook, Assistant Attorney General of Texas, do hereby certify that three copies of the above and foregoing Respondent's Brief in Opposition have been deposited in the United States Mail, air mail, certified, postage prepaid, on this the ___ day of August, 1979, to each of the following addresses: Mr. James H. Countryman, Petitioner, 214 West 5th Street, Room 204, Odessa, Texas 79761, and Mr. Harrell Feldt, Stubbeman, McRae, Sealy, Laughlin & Browder, P.O. Box 1540, Midland, Texas 79702.

JOHN ROWLAND COOK

APPENDIX

TITLE 15, United States Code

§1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

TITLE 28, United States Code

§1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

§1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between-

(1) citizens of different States;
(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.